REMARKS

Reconsideration is respectfully requested.

It is understood from the Advisory Action that the cancellation of claims 2 through 7 and 9 through 16 requested in the after-final "Response under 1.116" submitted October 2, 2003 was entered, as well as the amendments to claim 17.

Claim 17 remains in this application. Claims 1 through 16 were previously cancelled. No claims have been withdrawn. No claims have been added.

Claim 17 continues to be rejected under 35 U.S.C. Section 103(a) as being unpatentable over "Visual Rota from CDT" www.btinternet.com/vrota) in view of Donnelly et al (U.S. 6,192,346).

Claim 17, particularly as amended, requires "establishing, by management of an organization, a preliminary schedule of shifts of a plurality of employees of the organization" and "making, after establishment of the preliminary schedule of shifts by the management of the organization, a conditional offer, by a first employee of the plurality of employees who is assigned to work a first shift of a first type of job, to trade the first shift for another shift of another employee of the plurality of employees, the first type of job having predetermined minimum training requirements required of employees qualified to perform the first type of job, the predetermined minimum training requirements for each type of job being stored in a training requirements database, training qualifications for each employee of the plurality of employees being stored in a training qualifications database".

Amended claim 17 further requires "checking, after the second employee has submitted the conditional acceptance, training qualifications

data for the first and second employees stored in the training qualifications database", "comparing the training qualifications data for the second employee against the predetermined minimum training requirements for the first type of job of the first shift", "comparing the training qualifications data for the first employee against the predetermined minimum training requirements for the second type of job of the second shift", and "rejecting a trade of the first shift of the first employee for the second shift of the second employee if the training qualifications data of the second employee does not meet the predetermined minimum training requirements for the first type of job or if the training qualifications data of the first employee does not meet the predetermined minimum training requirements for the second type of job".

Again, it is noted that the primary reference of the combination of references cited in the rejection, the Visual-Rota publication, makes no distinction between the types of jobs and their training qualification requirements. The Visual-Rota reference generally relates to a system that permits swapping of shifts (or days off) between employees in a schedule. No distinction is made between jobs or skills in the disclosure of Visual-Rota, and thus the disclosed system is incapable of determining qualifications.

The Donnelly reference teaches a system for creating a working schedule that does not provide for any employee changes to the schedule once it has been established, and therefore the disclosure leaves one at a loss as to what restrictions and permissions might be applied to any such employee interference with the system. Further, Donnelly does not teach any limitation of trading shifts between employees based upon training qualifications so the employees could trade shifts of types of jobs for which they are not qualified. It is submitted that the Donnelly patent only discusses displaying a listing of qualified employees for a job or task during

an initial assignment of employees to projects. However, Donnelly is completely silent as to imposing any limitation on the trading of shifts from one employee to another based upon the predetermined training requirements of the types of jobs to be traded and the training qualifications of the employees proposing the trade. Neither does Donnelly teach rejecting a proposed trade of shifts between employees if the training requirements and the training qualifications do not match between the trading employees.

Also, it is again noted that claim 17 requires "checking a length of time between a time of receipt of the conditional acceptance and a time of occurrence of the first shift and the second shift against a minimum time period for trading shifts to verify that the length of time is not less than the minimum time period". As outlines in the disclosure, this requirement assures that the employees are not attempting to make changes in their schedule at a time that its too close to the time of the shift. The minimum time period can be established by the employer based upon, for example, the feasibility of verifying the criteria set by the employer before the shift occurs, or may implement part of a negotiated labor contract between the employer and the labor union representing the employees.

It was alleged in the final Office Action that "it is old and well known that places of employment require that employees give notice by a specific deadline in order to do things such as take leave, quit, swap shifts, etc."

Rather than requiring that certain events have advance notice, the Visual-Rota reference suggests to one of ordinary skill in the art that events such as sickness and "leaving" can be predicted "statistically" and thus compensated for. See page 3, section 3 of the Visual-Rota reference, where it states (emphasis added:

> As long as everyone works to these shifts, then there are no problems, however, human nature and health do need to be handled correctly.

> Sickness is one problem that tends to be statistically cyclical, staff leaving is also predictable. These and many other variables can be factored into the statistics.

Thus, it is submitted that the Visual-Rota reference teaches one of ordinary skill in the art that shift altering events can be predicted rather than suggesting to one of ordinary skill in the art that shift altering events must be arranged more than a minimum period of time before the shift change is to occur.

In fact, the Visual-Rota reference tends to downplay any limitations on the ability of the employees to trade shifts, as is evidenced on page 3, section 1 of the Visual-Rota reference that states (emphasis added):

> However, this means that the first person is working one shift less and the second person is working one day more. So, they need to find another day, where the second person has a shift and the first person has a day off, and swap. Then the system is balanced and everyone is working the right number of shifts. With Visual-Rota, this swap can be any time, it doesn't have to be in the same week or even month, it can be in 3 months time.

Thus, the emphasis that one of ordinary skill in the art takes from the Visual-Rota teaching is that there is little restriction on the swapping of shifts, and that balancing is the primary restriction on any swap.

It was further alleged in the final Office Action that "in order for an employee to withdraw from employment with a business, he or she must give notice a specific length of time before quitting so that the business can find someone to fill said employee's responsibilities before said employee leaves". The example given in the Office Action is not applicable here for at least three significant reasons. Firstly, the invention (and the cited references) do not deal in any sense with an employee leaving his or her employment, in which case a permanent replacement must be found not for only one shift but *all* shifts of that employee and which one can appreciate is a much more time consuming task requiring a significantly longer amount

of lead time than merely changing shifts. Secondly, and perhaps more significantly, the "specific length of time" that is referred to in the Office Action to bolster the argument does not exist--an employee can quit his or her job at any time without having to stay on for any period of time after the giving of notice. One may give advance notice (of, for example, two weeks) to the employer prior to leaving as a courtesy to the employer and/or stay on good terms with the employer for future job references, but that is certainly not required of the employee to leave his or her job, or one could be subject to involuntary servitude. In other words, one can simply leave his or her job today and not be legally bound or legally liable to the employer because prior notice was not given. Thirdly, as noted above, the Visual-Rota reference clearly suggests to one of ordinary skill in the art that "staff leaving" can be predicted, and thus tends to decrease the impact of having prior notice of the quitting of an employee.

The above distinction is significant in that claim 17 *requires* "a minimum time period" before the proposed shift trade before confirming the shift trade, and rejecting the shift trade if the criteria is not met.

It was further contended in the final Office Action that "[I]t would have been obvious... to require a specific length of time between the shift swap and the shift in order to increase the efficiency of the schedule and the timeliness of the company by making sure that all areas involved are appropriately staffed". However, nothing in the references suggests that a shift swap performed a "specific length of time" before the shift increases the "efficiency" or "timeliness" of the system, and nothing in the Office Action explains how efficiency is increased by increasing the notice. While this aspect of the claimed invention derives benefits from implementing negotiated agreements and providing time to check or verify training criteria, it is significant that neither of these benefits (or any benefits at all) are mentioned in the cited references for increasing the amount of time

prior to the shift required to make the shift swap.

Again, it is noted that claim 17 requires "restricting access to information about the trade of the first shift for the second shift upon confirmation of the trade". This requirement of claim 17 makes sure that others not participating in the shift trade are not made privy to any and all of the trades that are being made, which is generally desirable for employee privacy but may also be required by a union contract dealing with such matters.

Although this requirement was discussed in the "Response under 1.116", the Advisory Action completely ignored this requirement of claim 17, and not one portion of either reference was cited in the Advisory Action or in the final Office Action in support of the allegation that this feature of the claimed invention flows from the teaching of the Visual-Rota and Donnelly references. These references cannot teach or suggest what is not eve alluded to in their disclosures, and therefore it is submitted that the prior art would not lead one of ordinary skill in the art to this requirement of claim 17.

It is therefore submitted that the prior art, and especially the allegedly obvious combination of Visual-Rota and Donnelly et al. set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claim 17.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

KAARDAL & ASSOCIATES, PC

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